

STATUTORY INSTRUMENTS

2021 No.....

THE CONSTITUTION (BAIL GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 2021

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SCHEDULE APPLICATION FOR BAIL REFUND

STATUTORY INSTRUMENTS

2021 No.....

The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2021

(Under Article 133 (1) (b) of the Constitution of the Republic of Uganda, 1995)

IN EXERCISE of the powers conferred upon the Chief Justice by article 133 (1) (b) of the Constitution, these Practice Directions are issued this day of 2021.

PART I - PRELIMINARY

1. Title

These Practice Directions may be cited as the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2021.

2. Application

These Practice Directions apply to all courts of judicature.

3. Objective of Practice Directions

The Objective of these Practice Directions is-

- (a) to complement the existing legal provisions on bail;
- (b) to promote uniformity and consistency by courts when considering bail applications;
- (c) to streamline and address the disparities in the handling of bail decision with a view to enabling fair administration of bail measures;
- (d) to ensure that bail decision making complies with the requirements of the Constitution;
- (e) to promote the balancing of rights of accused persons with the public interest and the rights of the victims;
- (f) to facilitate effective inter-agency cooperation and coordination in bail;
- (g) enhance conformity with the internationally agreed minimum standards for arrested persons held in detention;
- (h) to address the abuse of pretrial detention;
- (i) to safeguard the interest of victims of crime in bail decision making;
- (j) to facilitate effective supervision of accused persons granted bail; and
- (k) to promote transparency and efficiency in management of bail deposits and refunds.

4. Interpretation

In these Practice Directions, unless the context otherwise requires-

“applicant” means an accused person who has applied to court for bail;

“bail” means an agreement between the applicant or his other sureties and the court that the applicant will attend court when required, and that should the applicant abscond, in addition to the court issuing warrants of arrest, a sum of money or property directed by the court to be deposited, will be forfeited to the State;

“bail hearing” means a proceeding in which the court determines whether the applicant should be released or held in custody pending trial;

“bail report” means a social inquiry report based on information generated about the background and community ties of the applicant in order to verify information provided to the court by the applicant to assess the likelihood that the applicant will appear for trial and enable the court to impose reasonable bail terms and conditions;

“probation officer” means a member of the probation service for which provision is made by section 14 of the Probation Act;

“security” means a sum of money pledged in exchange for the release of an accused person as a guarantee of that person's appearance for trial;

“surety” means a person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and puts up security such as money or title to property which may be forfeited to the State if the applicant fails to appear in court;

“vulnerable persons” include persons of advanced age, grave illness, expectant mothers, care givers and persons with disabilities.

PART II- GENERAL PRINCIPLES AND THE RIGHT TO APPLY FOR BAIL

5. General principles

The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution-

- (a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;
- (b) the applicant's right to liberty as provided for in article 23 of the Constitution;
- (c) the applicant's obligation to attend trial;
- (d) the right to reasonable bail terms in light of the importance of the right to liberty and presumption of innocence;
- (e) determination of bail must balance the rights of the applicant and the interest of justice;
- (f) the safety of the prosecution, applicant, victims and the community; and

- (g) consideration of views of the victims.

6. Right to apply for bail

Where a person is charged with or convicted of a criminal offence and pending appeal, he or she may apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.

7. Stage of application for bail

A person may apply for bail at any of the following stages-

- (a) after taking plea in a Magistrate's court or High Court; or
- (b) after conviction pending appeal, only where a memorandum of appeal has been filed.

PART III - PROCEDURE AND CONSIDERATIONS FOR APPLICATION FOR BAIL

8. Bail for offences triable by High Court and Magistrates Court

Where an offence is triable by the High Court as a well as by a subordinate court if that person has been remanded in custody in respect of that offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable.

9. Bail for offences triable only by High Court

Where an offence is triable only by High Court if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.

10. Procedure for applying for bail

An application for bail may be oral in a Magistrate's Court and shall be by notice of motion supported by affidavit in the High Court, Court of Appeal and the Supreme Court.

11. Contents of bail application

An application for bail shall contain-

- (a) particulars of the applicant including-
 - (i) National Identity Card, Passport or Aliens Identification Card;
 - (ii) an introduction letter from area Local Council 1 chairperson or his or her representative;
 - (iii) where applicable, employer's letter;
 - (iv) passport size photographs of the applicant; and
 - (v) where applicable, asylum seeker or refugee registration documents issued by office of the Prime Minister; and
- (b) expounded grounds for the application.

12. Considerations for bail

(1) The Court in handling a bail application shall consider the following—

- (a) the gravity of the offence;
- (b) the nature of the offence;
- (c) the antecedents of the applicant so far as they are known;
- (d) the possibility of a substantial delay of the trial;
- (e) the applicant's age, physical and mental condition;
- (f) the likelihood of the applicant to attend court;
- (g) the stage of the proceedings;
- (h) the likelihood of the applicant to commit an offence while on bail;
- (i) the likelihood of the applicant interfering with witnesses;
- (j) the safety of the applicant, the community and victims;
- (k) whether the applicant has a fixed place of abode within Uganda or he or she is ordinarily resident outside Uganda;
- (l) whether the applicant has substantial sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail;
- (m) whether the applicant has on a previous occasion when released on bail failed to comply with his or her bail;
- (n) whether there are any other charges pending against the applicant;
- (o) whether the bail amount or security is sufficient to secure the applicant's attendance in court when weighed against the gravity of the offence;
- (p) whether the offence of which the applicant is being accused involved violence;
or
- (q) whether the case is frivolous and does not have a reasonable chance of success.

(2) Where court grants the application for bail, the reasons and conditions attached to the grant of bail shall be set out in the ruling, copies of which shall be availed to the victim.

13. Presentation of views of victim

(1) The court may give a victim of a crime an opportunity to submit any information that in their view court should consider in making its bail decision.

(2) The information under subparagraph (1) shall include information on the safety of the victims and their families.

(3) The presentation of the view of a victim shall be presented in a manner that is not prejudicial to the rights of the accused person.

14. Consideration of bail in capital offences

(1) The court may in exceptional circumstances grant bail to a person accused of committing any of the offences specified under Section 15(2) of the Trial on Indictment Act.

(2) The exceptional circumstance referred to in subparagraph (1) include-

- (a) grave illness certified by a medical officer of the prison or other institution or place where the applicant is detained as being incapable of adequate medical treatment while the applicant is in custody;
- (b) a certificate of no objection signed by the Director of Public Prosecution; and
- (c) the infancy or advanced age of the applicant.

15. Determining suitability of surety

(1) When considering the suitability of a surety, the court shall take into account the following factors-

- (a) ability to satisfy the bail terms; delete this
- (b) age;
- (c) work and residence address of the surety;
- (d) character and antecedents of the surety;
- (e) relationship to the accused person; and
- (f) any other factor as court may deem fit.

(2) Subject to subparagraph (1) the proposed surety shall provide documentary proof including -

- (a) a National Identity Card, Passport or Aliens Identification Card;
- (b) an introduction letter from area Local Council 1 chairperson or his or her representative;
- (c) where applicable, employer's letter;
- (d) passport size photographs of the and sureties; or
- (e) asylum seeker or refugee registration documents issued by the office of the Prime Minister.

16. Obligations of surety

(1) The court shall inform the sureties of their obligations and ensure that the sureties understand their obligations and risks they assume when they undertake to serve as sureties.

(2) Where court accepts a person as surety, it shall explain his or her obligations and require him or her to sign a notice of undertaking of bail as prescribed in the Schedule to these Practice Directions g setting out the applicant's bail conditions and the consequences for the surety if the applicant breached those conditions.

17. Consideration for bail for children.

(1) Where a child appears before a court charged with any offence, court shall inquire into the case and unless there is a serious danger to the child, release the child—

- (a) on a court bond on the child's own recognizance; or

- (b) with sureties preferably the child's parents or guardians who shall be bound on a court bond, not cash.

(2) Where bail is not granted, the court shall record the reasons for refusal and inform the applicant of his or her right to apply for bail to a Chief magistrate's court or to the High Court

18. Consideration of bail to vulnerable persons.

The court may grant bail to vulnerable persons on their own recognizance or on a recognizance being entered into his or her parent, guardian or other responsible person, with or without sureties for such amounts as will in the opinion of court, secure the attendance of the vulnerable person.

19. Bail pending appeal.

The court shall, in handling an application for bail pending appeal, take into consideration the following factors-

- (a) the character of the applicant, whether he or she is a first offender or not;
- (b) whether the offence of which the applicant was convicted involved personal violence;
- (c) the appeal is not frivolous and has a reasonable possibility of success;
- (d) the loss incurred by the victim;
- (e) the possibility of substantial delay in the determination of the appeal; or
- (f) whether the applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of the appeal.

20. Denial of bail.

(1) The court shall not grant bail where-

- (a) there is a real likelihood that the applicant will not appear at the trial;
- (b) there is a real likelihood of another offence being committed while the applicant is on release;
- (c) the applicant has previous conviction;
- (d) the applicant is likely to interfere with investigations;
- (e) safety of the victim;
- (f) safety of the applicant; or
- (g) where the applicant is violent or is likely to intimidate and interfere with witnesses.

(2) Where Court declines to grant bail, the applicant and the victim shall be informed of the reasons for the decision set out in the ruling.

PART IV- DUTIES OF THE PROSECUTION AND DEFENCE IN THE GRANT OF BAIL

21. Duties of prosecution

(1) The Prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail.

(2) The Prosecution shall state the reasons that in its view should persuade the court to deny the applicant bail including the following—

- (a) sufficient facts to enable the court deny bail;
- (b) information relating to the applicant;
- (c) that the applicant is likely to fail to attend court proceedings;
- (d) that the applicant is likely to commit or abet the commission of a serious offence;
- (e) that the exception to the right to bail stipulated under section 15 of the Trial on indictment Act is applicable in the circumstances;
- (f) that the applicant is likely to endanger the safety of victims, individuals or the public;
- (g) that the applicant is likely to interfere with witnesses or investigations;
- (h) that the applicant is likely to endanger national security; or
- (i) that it is in public interest to detain the applicant in custody.

(3) For the purposes of subparagraph (2) (b), information relating to an offender includes-

- (a) the circumstances under which the offence was committed; and
- (b) the offender's past criminal record.

(4) The prosecution shall present to the Court all relevant information relating to any of the following-

- (a) the impact of the crime on the victim, the family members of the victim and the community, including the impact statements relating to the victim and the community;
- (b) statistics regarding the frequency and relative seriousness of the offence;
- (c) the degree of preparedness with which the crime was committed;
- (d) the problem encountered in trying to prevent the commission of the crime in question; and
- (e) any other relevant information.

22. Disclosure

The Prosecution shall disclose to the applicant any information to be relied upon by the Prosecution in objecting to bail, provided that there is no good reason for withholding such information, including the protection of witnesses or the preservation of national security.

23. Duties of the Defence

The Defence shall avail the Prosecution with all information that the Defence intends to rely on in applying for bail including -

- (a) the offender's social background and social status;
- (b) details about the offender's family including dependants, if any; and
- (c) any responsibilities of the offender, including whether the offender is a primary care-giver.

24. Bail report.

(1) The court may request the probation officer or a community development officer for a bail report where it considers that it does not have sufficient information to make a fair and appropriate bail decision, including the following instances-

- (a) where there is doubt on the information on the accused person relating to the grant of bail;
- (b) where the Prosecution objects to bail, with plausible reasons;
- (c) where the accused person has been granted bail but fails to meet bail terms and seeks review of those terms;
- (d) where the victim of the crime contests the grant of bail or applies for review of bail conditions; or
- (e) on the court's own motion, where it deems necessary.

(2) Where the court has called for a bail report, it shall give the Prosecution and the Defense an equal opportunity to contest the findings of the report.

25. Rebuttal by accused person

The court shall, before deciding whether to grant or deny the applicant bail, give the applicant an opportunity to rebut the claims of the Prosecution and the victim of the crime.

PART V - REVIEW OF BAIL TERMS AND INCIDENTAL MATTERS.

26. Review of bail terms

(1) The Prosecutor, the accused or the surety may move court to review the terms and conditions of bail.

(2) The court may on its own motion under exceptional circumstances, review the terms and conditions of bail.

(3) Where through a mistake, fraud or otherwise, insufficient sureties have been accepted, or where the sureties afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him or her to find sufficient sureties, and on his or her failing find sureties, commit him or her in prison.

(4) The prosecutor, the accused or surety may, by letter in a Magistrate's Court or by notice of motion supported by affidavit in the High Court, apply for review of the terms and conditions of bail.

- (5) A party applying for review of the terms and conditions of bail shall notify other concerned parties to be present in court when the application is being considered.
- (6) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to court to discharge the bond either wholly or so far as it relates to the applicant or applicants.
- (7) Where an application is made under subparagraph (6), the court shall issue criminal summons directing the accused to come with alternative sureties.
- (8) On failure by the accused to honor criminal summons as provided for under paragraph (6) court shall issue a warrant of arrest directing for the arrest of the accused.
- (9) On appearance, the accused shall avail alternative sureties before discharge of the bond and on failure to do so, shall be committed to prison.

PART VI –MANAGEMENT OF BAIL FUNDS

27. Receipt of bail funds from applicants

- (1) Upon granting bail, the file shall be submitted to the cashier for online assessment on the Uganda Revenue Authority portal.
- (2) The cashier shall, upon receipt of the file under subparagraph (1), print and issue the assessment form to the applicant, who will then deposit the bail amount in the relevant bank and the payment shall be instantly recognized by the URA system and an acknowledgement receipt issued at the bank counter.
- (3) The applicant shall present the URA acknowledgment receipt to the cashier.
- (4) The cashier shall issue a Government of Uganda General Receipt in triplicate after confirming the deposit in the URA system.
- (5) The original receipt shall be retained on the case file, the duplicate shall be issued to the applicant or his or her representative with a stamp indicating that the original has been retained by the court, the triplicate shall be retained by the cashier.
- (6) The receipt shall bear the name of the accused person, the case number and the Payment Registration Number (PRN).
- (7) The cashier shall present the file to the court clerk who will then present it to the presiding judicial officer for further action.

28. Areas where banks are not easily accessible.

In areas where banks are not easily accessible, the following procedure shall be followed-

- (a) the court shall seek authority in writing from the Secretary to the Judiciary to collect bail funds in cash, and permission granted shall be in writing.
- (b) in such circumstances, after the cashier has done the online assessment of the bail amount to be deposited, he or she shall receive the cash indicated on the

assessment form plus the applicable bank charges and then issue a Government of Uganda general receipt in triplicate bearing the name of the accused and the case number;

- (c) the original receipt shall be retained on the case file, the duplicate shall be issued to the applicant or his or her representative with a stamp indicating that the original has been retained by the court, the triplicate shall be retained by the cashier
- (d) the cashier shall present the file to the court clerk who will then present it to the presiding judicial officer for further action;
- (e) the cashier shall then deposit all the cash collected against the assessment forms in the bank on the next convenient day, and indicate the PRN on the original receipt on the case file (s) and on the triplicate receipts in his possession; and
- (f) the URA receipt shall be filed on the case file.

29. Maintenance of bail records

- (1) The court shall maintain bail records to enable accurate reporting and management of bail funds.
- (2) The records shall be updated on a regular basis and made available to different stakeholders including inspectors and auditors.
- (3) The following records shall be maintained-
 - (a) a bail register which shall have the case number, the parties to the case, the amount of bail paid, date of payment, amount refunded and date of refund; and
 - (b) a cash book to record bail collected and banked.

30. Bail refunds.

- (1) Upon disposal of a case, a bail refund application form prescribed in the Schedule to these Directions shall be availed to the claimant to fill before leaving the court.
- (2) The claimant shall deposit the original bail bond form.
- (3) The Clerk shall submit the filled bail refund application form, court order for refund of bail bearing the name and signature of respective judicial officer and a court seal, and the original bail bond form received from the claimant to the cashier.
- (4) The cashier shall then attach the original receipt and an original URA acknowledgment receipt, where applicable, to the documents received from the clerk, and prepare a requisition to the secretary to the judiciary for the signature of the head of court or Registrar.
- (5) The signed requisition by the Register under subparagraph (4) shall be delivered by the court and duly acknowledged by the office of the Secretary to the Judiciary for processing of the refund directly to the account of the claimant or their registered telephone number.

(6) The requisition for bail refund should be made by the court to the secretary to the judiciary as soon as possible in any case not later than one month from receipt of the application from the claimant.

(7) Upon receipt of the requisition, the Permanent Secretary/Secretary to the Judiciary shall forward receipt to the Internal Audit Unit for verification to ascertain if all the relevant documents are attached and whether payment was received on account.

(8) Where verification is complete, it is sent back to the Permanent Secretary/Secretary to the Judiciary for authorisation of payment.

(9) Any queries raised by internal audit during verification of the documents shall be referred to the Chief Registrar for onward transmission to the court that submitted the requisition for bail refund.

31. Reporting requirements.

(1) The cashier shall prepare a bail report on a monthly basis, which shall be submitted to the Secretary to the Judiciary and a copy maintained at the respective court.

(2) The report shall contain the following –

- (a) bail assessments made during the month;
- (b) bail funds collected during the month;
- (c) bail refunds requisitioned during the month; and
- (d) bail forfeitures during the month.

(3) The accounting officer shall prepare a report on the status of all bail refund requisitions received during the month.

(4) The report prepared under subparagraph (3) shall also provide a status on the refunds were carried forward from the previous months.

(5) The report shall be submitted to the Chief Registrar for dissemination to the courts.

32. Forfeiture

(1) The cashier shall report on mandatory forfeitures on a monthly basis and make orders to the secretary to the judiciary to transfer forfeited funds to the Consolidated Fund.

(2) Any bail funds not claimed within two years from the date of the order of refund shall be forfeited and declared to the Secretary to the Judiciary who shall transfer the funds to the Consolidated Fund.

SCHEDULE

Paragraph 30

APPLICATION FOR BAIL REFUND

Date: _____

Name of applicant _____

Telephone number of applicant: _____

Case Number: _____

Parties in the case: _____

Court: _____

Bail amount: _____

Payment Registration Number (PRN): _____

Government of Uganda General Receipt Number: _

Details of bank account to which the refund should be transferred:

Name of bank where account is held: _____

Bank branch: _____

Account name: _____

Account Number: _____

Signature of Claimant: _____

FOR OFFICIAL PURPOSES

Cross References

Children Act, Cap. 59
Constitution of the Republic of Uganda
Trial on Indictments Act, Cap. 23

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ALFONSE CHIGAMOY OWINY- DOLLO
Chief Justice